

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC RICHARD ETHIER,

Petitioner,

No. C04-2381Z

V.

UNITED STATES OF AMERICA,

Respondent.

ORDER

The Court, having considered Eric Richard Ethier's Petition to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255, docket no. 1, Magistrate Judge Benton's Report and Recommendation relating thereto, docket no. 21, along with all of the pleadings filed in this matter, does hereby ORDER:

(1) The Court ADOPTS the Report and Recommendation with the following modifications:

(a) The Ninth Circuit has now decided that “Booker does not apply retroactively to convictions that became final prior to its publication.” United States v. Cruz, __ F.3d __, 2005 WL 2243113 (9th Cir. Sept. 16, 2005).

(b) The sentence beginning on page 7, line 7, and ending on page 7, line 8, is hereby modified to state that "Judge Zilly found a total offense level of

twenty-nine (29) points, which was within the range contemplated by the parties.”

(2) Petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 motion (Dkt. #1) is DENIED. Petitioner's motion for bail status and release (Dkt. #6) and his motion for voluntary dismissal (Dkt. #20) are also DENIED.

(3) The Clerk is directed to send a copy of this Order to Petitioner, to counsel for Respondent, and to Judge Benton.

IT IS SO ORDERED.

DATED this 12th day of October, 2005.

Thomas S. Zilly
Thomas S. Zilly
United States District Judge